

SENATE BILL NO. 488

INTRODUCED BY J. ELLINGSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MINIMUM DAMAGES FOR DISCLOSURE OF PERSONAL INFORMATION BY A HEALTH CARE PROVIDER OR A HEALTH CARE INSURER IN VIOLATION OF THE CONSTITUTIONAL OR COMMON-LAW RIGHT OF PRIVACY, THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT, OR THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 33-19-407 AND 50-16-553, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Civil penalty for breach of right to privacy by health care provider or insurer -- limitation on action -- definitions. (1) If a court finds that a health care provider or health care insurer has disclosed health care information about a patient of that health care provider, or about an insured or potential insured of that health care insurer, in violation of the patient's, insured's, or potential insured's right of privacy as established under the Montana constitution, the United States constitution, or the common law applicable in Montana, the court may award civil damages against the health care provider or health care insurer. The damages awarded may not be greater than those actually suffered by the patient, the insured, or the potential insured. However, the court shall award minimum damages of \$500.

(2) In determining the amount of damages to be awarded pursuant to subsection (1), the court shall consider the circumstances under which the violation occurred, including the degree of knowledge with which the unlawful disclosure was made, the extent of the unlawful disclosure, and the effect of the disclosure on the individual about whom the information was disclosed.

(3) The following definitions apply to this section:

(a) "Health care insurer" has the meaning provided in 33-22-241.

(b) "Health care provider" has the meaning provided in 33-32-102.

Section 2. Section 33-19-407, MCA, is amended to read:

"33-19-407. Individual remedies. (1) If ~~any~~ an insurance institution, insurance producer, or

1 insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect
2 to the rights granted under those sections, any person whose rights are violated may apply to the district
3 court of this state or any other court of competent jurisdiction for appropriate equitable relief.

4 (2) An insurance institution, insurance producer, or insurance-support organization that discloses
5 information in violation of 33-19-306 is liable for damages sustained by the individual to whom the
6 information relates. ~~However, an~~ An individual is not entitled to a monetary award which that exceeds the
7 actual damages sustained by the individual as a result of a violation of 33-19-306. However, an individual
8 is entitled to a minimum monetary award of \$500.

9 (3) In determining the amount of damages to be awarded pursuant to subsection (2), the court
10 shall consider the circumstances under which the violation occurred, including the degree of knowledge
11 with which the unlawful disclosure was made, the extent of the unlawful disclosure, and the effect of the
12 disclosure on the individual about whom the information was disclosed.

13 ~~(3)(4)~~ In any action brought pursuant to this section, the court may award the cost of the action
14 and reasonable ~~attorney's~~ attorney fees to the prevailing party.

15 ~~(4)(5)~~ An action under this section must be brought within 2 years from the date the alleged
16 violation is or should have been discovered.

17 ~~(5)(6)~~ Except as specifically provided in this section, there is no remedy or recovery available to
18 individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter."

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20 **Section 3.** Section 50-16-553, MCA, is amended to read:

21 **"50-16-553. Civil remedies.** (1) A person aggrieved by a violation of this part may maintain an
22 action for relief as provided in this section.

23 (2) The court may order the health care provider or other person to comply with this part and may
24 order any other appropriate relief.

25 (3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2)
26 is not liable for disclosures made in reliance on that certification.

27 (4) ~~No disciplinary~~ Disciplinary or punitive action may not be taken against a health care provider
28 or ~~his~~ the provider's employee or agent who brings evidence of a violation of this part to the attention of
29 the patient or an appropriate authority.

30 (5) In an action by a patient alleging that health care information was improperly withheld under

1 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the
2 information was properly withheld.

3 (6) If the court determines that there is a violation of this part, the aggrieved person is entitled to
4 recover damages for pecuniary losses sustained as a result of the violation, and; in addition, if the violation
5 results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of
6 \$5,000, exclusive of any pecuniary loss. In all cases, the court shall award minimum damages of \$500.

7 (7) In determining the amount of damages to be awarded pursuant to subsection (6), the court
8 shall consider the circumstances under which the violation occurred, including the degree of knowledge
9 with which the unlawful disclosure was made, the extent of the unlawful disclosure, and the effect of the
10 disclosure on the person about whom the information was disclosed.

11 ~~(7)(8)~~ If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses
12 reasonably incurred in the litigation.

13 ~~(8)(9)~~ An action under this part is barred unless the action is commenced within 3 years after the
14 cause of action accrues."

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16 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
17 integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to [section 1].

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19 NEW SECTION. Section 5. Applicability. [This act] applies to causes of action arising on or after
20 October 1, 2001.

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